

(1993) 01 DEL CK 0022

In the Delhi High Court

Case No : Civil Writ Petition No. 3737 of 1992

Reena Bose

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 18-01-1993

Acts Referred:

Citation : (1993) 50 DLT 295

Hon'ble Judges : V.K. Jain, J;D.P Wadhwa, J

Bench : Division Bench

Advocate : Kitty Kumaramangalam, Indra Sawhney, V.P. Chaudhary, Sushma Sachdeva and Rajan Sareen, for the Appellant;

Judgement

D.P. Wadhwa, J.

(1) The petitioner claiming herself to be President of the Indian Nursing Council (I.N.C.) has filed this petition under Article 226 of the Constitution praying for a writ direction or order striking down an office order dated 24-3-1992 of the respondents, or in the alternative calling upon the respondents to allow the petitioner to continue as President of the I.N.C. There are two respondents. First respondent is represented through the Secretary, Ministry of Health and Family Welfare and second respondent is Mr. R.K. Sood, Vice President, I.N.C., who at the time of filing this writ petition was also working as Acting President of I.N.C. The impugned letter is of the first respondent addressed to the Secretary, I.N.C., with copies both to the petitioner and the second respondent. In this letter it was stated that petitioner ceased to be the President of the I.N.C. w.e.f. 7/01/1992 on cessation of her membership u/Sec.3(1)(m) of the Indian Nursing Council Act, 1947 (for short "the Act"). It was, Therefore, suggested that it was necessary to hold fresh election of the President.

(2) I.N.C. is constituted under the Act which Act has been enacted in order to establish a uniform standard of training for nurses, midwives and health visitors. Section 3 of the Act gives the Constitution and composition of the Council. Under

Sub-section (1) of this Section, Central Government is to constitute a Council consisting of various members as set out in Clauses (a) to(o). For our purposes Clauses (a) and (m) are relevant and these are asunder :-

(A)One nurse enrolled in a state register elected by each StateCouncil;x x x(m) the Superintendent of Nursing Services (by whatever name called)ex-officio from each of the States in the two groups mentioned below, each group of States being taken in rotation in the following order, namely.(i) Andhra Pradesh, Assam, Maharashtra, Madhya Pradesh Madras ,Uttar Pradesh, West Bengal and Haryana; (ii) Bihar, Gujarat, Kerala, Mysore, Orissa, Punjab and Rajasthan;X X x

(3) Under Sub-section (2) of Section 3; the President of the Council is to be elected by the members of the Council from amongst themselves and the President is to hold office for five years. u/s 4, the Council constituted u/s 3 shall be a body corporate by the name of the Indian Nursing Council having perpetual succession and a common seal, with power to acquire property and shall by the said name sue and be sued. Under Sub-section (1) of Section 5, election under Sub-section (1) of Section 3 of State Councils shall be conducted in accordance with the rules made in this behalf by the respective State Governments and where any dispute arises regarding any such election it shall be referred to the State Government concerned whose decision shall be final. Section 6 provides for term of office and casual vacancies. Sub-sections (1) and (2) are relevant and are asunder:-

"(1)Subject to the provisions of this Section; an elected or nominated member, other than a nominated President, shall hold office for a term of five years from the date of his election or nomination or until his successor has been duly elected or nominated, whichever is longer.(2) An elected or nominated member may at any time resign his membership by writing under his hand addressed to the President ,and the seat of such member shall thereupon become vacant."

(4) Then Regulations have been framed by the Indian Nursing Council under Sub-section (1) of Section 16 of the Act and Regulations 35and 36 appearing in Part V relating to resignation and filing of casual vacancies are again relevant and are as under :-

"35.A member desiring to resign his/her seat on the Council shall send his/her resignation in writing to the President or Secretary and his/her resignation shall take effect from the date specified by him/her in this behalf or from the date receipt of his/her letter by the President or Secretary whichever is later.36. When a casual vacancy occurs by reason of the death, resignation of a member, a report shall be made forthwith by President to the Central Government who shall take steps to have the vacancy filled by nomination or election as the case may be, by the authority or constituency by which the member whose death or resignation has caused the vacancy was nominated or elected."

(5) We may also note Regulations 8 and 10 of the West Bengal Nursing Council Regulations which are as under :

"8. Not less than 14 days" notice of any ordinary meeting including its Agenda papers shall be given to each member of the Council directed to such address as he shall from time to time furnish to the Registrar. 10. No business which is not upon the Agenda paper shall be discussed at any meeting of the Council (except routine business) unless the President declares such business to be of an urgent nature, and is supported by two thirds of the members present and voting."

(6) There is no dispute that the petitioner was first a member under Clause (m) of Section 3(1) of the Act. Under this clause she was nominated on 7 Jan., 1987 and as per provisions of the Act her term was to expire on 7/01/1992. On 6/10/1989 she was elected President of the I.N.C. for a period of five years u/s 6 of the Act. But she would have vacated the office of President on 7/01/1992 on her ceasing to be a member under category 3(1)(m) of the Act.

(7) One Ms. Bani Chatterjee was a member of the Council under Clause (a) having been elected by the West Bengal Nursing Council on 2/11/1989 which fact was communicated by the West Bengal Nursing Council by letter dated 4/11/1991. Her term of five years was, therefore, to expire on 2/12/1994.

(8) up to this stage there is no dispute between the parties.

(9) The case of the petitioner, however, is that Ms. Bani Chatterjee resigned her membership u/s 3(1)(a) on 12/09/1991 and she was got elected by the West Bengal Nursing Council on this very day in the meeting held on 12/09/1991. She, therefore, says that it is immaterial whether her membership of the Central Council is relatable to Clause (m) or Clause (a) and so long as she continues to be the member of the Council she would continue to be President and would have ceased to be President after completing five years of her tenure as President effective from 6/10/1989. The respondents, however, contend that the election of the petitioner under Clause (a) of Section 3(1) of the Act is illegal and as such she ceased to be the President of the I.N.C. as on 7/01/1992 when there was cessation of her membership under clause (m) of Section 3(1) of the Act.

(10) We now examine as to how the petitioner could have been elected by the West Bengal Nursing Council u/s 3(1)(a) of the Act. Regulations have been set out above. The notice for holding of the meeting of the West Bengal Nursing Council is dated 29/08/1991 fixing the meeting for 12/09/1991. The notice had been issued by the Registrar of the West Bengal Nursing Council under the signature of Ms. Bani Chatterjee herself. The notice said that agenda would follow. At the same time there is a note given on this notice referring the regulation 8 stating that not less than 14 days notice of any ordinary meeting including its agenda papers shall be given to each member of the Council, directed to such address as he shall from time to time furnish to the Registrar. Admittedly, no agenda was circulated along with this notice. Then there is a notice dated 9 Jan., 1991 again issued by Ms. Bani Chatterjee as Registrar under her signature finding there with agenda for the meeting to be held on 12/09/1991. One of the agenda items is : "Resignation letter of Ms. Bani Chatterjee,

Registrar, West Bengal Nursing Council, who had been elected as a member to represent the Indian Nursing Council from this State and election of new elected member for Indian Nursing Council."

(11) The letter of resignation of Ms. Bani Chatterjee is, however, dated 12/09/1991 and petitioner says she herself in her capacity as President of the I.N.C. accepted the resignation there and then in the meeting of the West Bengal Nursing Council. If that was so the matter would have ended at that, but record does not support the contention raised by the petitioner. Ms. Bani Chatterjee by covering letter dated 12 December, 1991 addressed to the President, I.N.C., New Delhi, enclosed therewith her resignation letter again addressed to the President of the I.N.C. It is worthwhile noting that the President at that time was the petitioner herself. This letter of Ms. Bani Chatterjee was received in the office of the I.N.C. at New Delhi on 16/12/1991. There is no Explanation if the petitioner had accepted the letter of resignation of Ms. Bani Chatterjee on 12/09/1991 in the meeting of the West Bengal Nursing Council why Ms. Bani Chatterjee thought it fit to send the same letter again to the office of the I.N.C. at New Delhi, though addressed to the President. Photo copy of the original letter written by Ms. Bani Chatterjee dated 12/09/1991 and addressed to the President is on record. There is no endorsement of the petitioner having received the letter of resignation of Ms. Bani Chatterjee. Then we find regulations 8 and 9 of the West Bengal Nursing Council have also been flouted inasmuch as agenda papers were not circulated along with notice calling the meeting and moreover when there was no letter of resignation existing how it could be mentioned in the agenda which was subsequently circulated on 9/09/1991. Though West Bengal Nursing Council is not a party before us but we think it could not have said that the election in that meeting of the petitioner could validly have been made.

(12) Then it was contended by Ms. Kumaramangalam that the Central Government itself had accepted the election of the petitioner u/s 3(1)(a) of the Act, and in that connection she drew our attention to the list of members circulated by the respondents. It was, however, pointed out on behalf of the respondents that there was certain misconception in issuing this notice and as a matter of fact when the relevant provisions were examined it was found that the petitioner had not been elected validly u/s 3(1)(a) of the Act and on that account the impugned letter dated 24/03/1992 was issued.

(13) We do not find any error in the decision arrived at by the respondents and we find no merit in the writ petition which is dismissed.

(14) During the pendency of this writ petition it was submitted before us that the elections of the Indian Nursing Council were to be held on 26/11/1992. We did not stay the holding of the elections and appointed Mr. A.K. Mukherjee, Director General of Health Services, or his nominee to perform the duties of the President of the Council till we heard the matter as it was also brought to our notice that the second respondent was to retire on 30/11/1992. We had also said that the election results shall not be announced. On the subsequent date we were

informed that elections had since been held but counting of votes had not been done. We directed that sealed box containing ballot papers be brought into Court. This was brought to Court today. But in view of our order dismissing the writ petition we do not think it necessary to have the sealed box opened. We will, Therefore vacate the interim order made earlier and will direct that the election results be announced and President so elected to take over from Mr. A K Mukherjee who has been acting as President of the I.N.C. under our directions .